ISHMAEL LIM ABDULLAH

v.

PESURUHJAYA TANAH PERSEKUTUAN & ANOR

COURT OF APPEAL, PUTRAJAYA
RAUS SHARIF PCA
ABDUL MALIK ISHAK JCA
MAH WENG KWAI JCA
[CIVIL APPEAL NO: W-01-220-2010]
19 MAY 2014

LAND: *Acquisition of land - Acquisition for public purpose - Original land owner awarded compensation for acquisition of land - Land realienated and new title was issued under name of Land Commissioner - Original land owner transferred land to appellant's father - Appellant served with notice to vacate land and to demolish building built on it - Whether appellant registered owner of land - Omission of memorial on document of title - Whether mere formality - Whether land lawfully acquired - Land Acquisition Act 1960 ss. 8, 22 - National Land Code, s. 340*

In 1973, the land belonging to one Lim Cheng Kim was acquired under s. 8 of the Land Acquisition Act 1960 ('the Act') for a public purpose. Lim Cheng Kim, along with 13 other land owners were awarded compensation for the acquisition of the land. In 1974, the notice that possession had been taken of land in Borang K under s. 22 of the Act was issued. Subsequently, the land was realienated and a new title was issued in the name of the first respondent. The land was transferred from Lim Cheng Kim to Lim Yew Kay and notwithstanding the realienation to the first respondent, the land was next transferred to the latter's son, the appellant. In 1993, the appellant charged the land to United Malayan Banking Corporation as security for a loan. However, in 2002, the appellant was informed by the second respondent that the land had been acquired and the appellant was served with a notice to vacate and demolish any structures on the land on or before 22 March 2005. In his originating summons, the appellant sought (i) an injunction restraining the first and/or the second respondent from entering and taking possession of the land and demolishing any structures on it; (ii) a declaration that the appellant was the lawful registered owner of the land; and (iii) in the event the title of the land had been vested in the first respondent, steps be taken to restore ownership to the appellant.

In support of his application, the appellant submitted that as the lawful registered owner of the land, he had been paying the assessments and quit rents since 1993 and had made several land title searches on the land from 1993 to 2005. According to the appellant, the title searches confirmed that he was the registered proprietor, at all times. The appellant further claimed to have an indefeasible interest on the land pursuant to s. 340 of the National Land Code ('NLC') as no memorial in respect of the scheduled land had been endorsed on the title to the land in breach of s. 23 of the Act and hence, the acquisition process had not been completed in accordance with the law. It was the respondents' case that by the issuance of Borang K to Lim Cheng Kim and the other 13 land owners, the land had been lawfully acquired and formal possession had been taken by the land administrator. The second respondent admitted to the omission of the memorial but contended that the endorsement of the memorial was a mere formality. The High Court held that the acquisition process for the land had been completed when Borang K was issued in 1974 and that the land was therefore vested in the State Authority, notwithstanding the omission of the memorial on the document of title. The realienation of the land and registration in the name of the first respondent gave the latter an indefeasible title. Hence, the present appeal.

Held (dismissing appeal)

Per Mah Weng Kwai JCA delivering the judgment of the court:

(1) Upon the issuance of Borang K in 1974, the land had been vested in the State Authority notwithstanding that there was an omission to endorse the memorial on the title, which was a requirement under s. 23 of the Act. The requirement for an endorsement of the memorial was a formality and the omission to do so did not invalidate the acquisition process. As such, the purported transfer of the land in 1975 to the appellant's father and in 1992 to the appellant was void and ineffective. The acquisition process had ended in 1974. (para 39)

(2) Lim Cheng Kim, in law and in fact, no longer had good title to the land in 1975 and as such, was not in a position to transfer her title to the appellant's father. Where a vendor does not have a good title, the common law rule is that no person can give a better title than what he had under the maxim '*nemo dat quod non habet*'. (paras 49 & 50)

(3) The appellant had prior knowledge that the land had indeed been acquired some 28 years previously. He was informed that his application to change the condition of land usage of the land would not be processed as the land was involved in a Ministry of Defence project. The second respondent had invited the appellant to attend a discussion in 2002 to discuss and resolve the issue of ownership of the land. The appellant had also received a letter from the second respondent informing him that the land had been acquired by the government and that the land belonged to the first respondent. (para 51)

(4) The fact that the appellant, *inter alia*, continued to stay on the land with his family; continued to pay the assessments and quit rents, unfortunately, did not assist the appellant to prove that his title was indefeasible. On the contrary, the realienation of the land in 1986 and the registration of the first respondent as the new proprietor, it was the first respondent who had obtained an indefeasible title under s. 340 of the NLC. (paras 53 & 54)

Bahasa Malaysia *Translation Of Headnotes*

Pada tahun 1973, tanah milik Lim Cheng Kim telah diambil alih di bawah s. 8 Akta Pengambilan Tanah 1960 ('Akta') bagi tujuan awam. Lim Cheng Kim, bersama-sama dengan 13 pemilik-pemilik tanah yang lain diawardkan pampasan bagi pengambilan tanah tersebut. Pada tahun 1974, notis bahawa milikan tanah telah diambil dalam Borang K di bawah s. 22 Akta dikeluarkan. Seterusnya, tanah tersebut diberi milik semula dan hak milik baru dikeluarkan di bawah nama responden. Tanah tersebut dipindah milik daripada Lim Cheng Kim kepada Lim Yew Kay dan tanpa mengira pemberian milik semula kepada responden pertama, tanah tersebut seterusnya dipindah milik kepada anak lelakinya, iaitu perayu. Pada tahun 1993, perayu memajakkan tanah tersebut kepada United Malayan Banking Corporation sebagai cagaran bagi pinjaman. Walau bagaimanapun, pada tahun 2002, perayu dimaklumkan oleh responden kedua bahawa tanah tersebut telah diambil dan perayu telah diserahkan notis untuk mengosongkan dan meruntuhkan sebarang struktur di atas tanah pada atau sebelum 22 Mac 2005. Dalam saman pemulanya, perayu memohon (i) injunksi menghalang responden pertama dan/atau kedua daripada memasuki dan mengambil milikan tanah dan meruntuhkan struktur-struktur di atasnya; (ii) deklarasi bahawa perayu

merupakan pemilik berdaftar tanah yang sah; dan (iii) jika hak milik tanah telah diberikan diletakhakkan pada responden pertama, langkah-langkah untuk mengembalikan pemilikan kepada perayu. Dalam menyokong permohonannya, perayu menghujahkan bahawa sebagai pemilik berdaftar yang sah ke atas tanah tersebut, dia telah membayar taksiran dan cukai tanah sejak 1993 dan telah membuat beberapa carian hak milik tanah ke atas tanah tersebut dari 1993 hingga 2005. Menurut perayu, carian-carian hak milik mengesahkan bahawa dia adalah pemilik berdaftar tanah, pada setiap masa. Perayu seterusnya mendakwa mempunyai kepentingan tidak boleh disangkal ke atas tanah di bawah s. 340 Kanun Tanah Negara ('KTN') kerana tiada memorial berkenaan tanah yang dijadualkan telah diendorskan ke atas hak milik tanah, bertentangan dengan s. 23 Akta dan oleh itu, proses pengambilalihan tidak lengkap di bawah undang-undang. Adalah menjadi kes responden-responden bahawa dengan pengeluaran Borang K kepada Lim Cheng Kim dan 13 pemilik tanah yang lain, tanah tersebut telah diambil alih secara sah dan milikan formal telah dilakukan oleh pentadbir tanah. Responden kedua mengaku mengenai ketinggalan memorial tetapi menghujahkan bahawa endorsmen tersebut hanyalah sekadar formaliti. Mahkamah Tinggi memutuskan bahawa proses pengambilalihan ke atas tanah tersebut telah dilengkapkan apabila Borang K telah dikeluarkan pada tahun 1974 dan bahawa tanah tersebut dengan itu terletakhak pada Pihak Berkuasa Negeri, tanpa mengira ketinggalan memorial pada dokumen hak milik. Pemberian milik semula tanah dan pendaftaran di bawah nama responden pertama memberikannya hak milik tak boleh sangkal. Oleh itu, rayuan ini.

Diputuskan (menolak rayuan)

Oleh Mah Weng Kwai HMR menyampaikan penghakiman mahkamah:

(1) Dengan pengeluaran Borang K pada tahun 1974, tanah tersebut terletakhak pada Pihak Berkuasa Negeri tanpa mengira bahawa terdapat ketinggalan untuk mengendors memorial pada hak milik, yang merupakan keperluan di bawah s. 23 Akta. Keperluan untuk mengendors memorial adalah formaliti dan ketinggalan untuk berbuat sedemikian tidak membatalkan proses pengambilalihan. Dengan demikian, pindah milik yang didakwa ke atas tanah pada tahun 1975 kepada bapa perayu dan pada tahun 1992 kepada perayu adalah batal dan tidak efektif. Proses pengambilalihan telah berakhir pada tahun 1974.

(2) Lim Cheng Kim, di bawah undang-undang dan fakta, tidak lagi mempunyai hak milik yang sah ke atas tanah pada tahun 1975 dan dengan demikian, tidak berada dalam kedudukan untuk memindah milik hak miliknya kepada bapa perayu. Di mana penjual tidak mempunyai hak milik sah, peraturan common law adalah bahawa seseorang itu tidak boleh memberi hak milik sah lebih daripada apa yang dia miliki di bawah maksim '*nemo dat quod non habet*'.

(3) Perayu mempunyai pengetahuan terdahulu bahawa tanah tersebut telah pun diambil alih 28 tahun sebelum ini. Dia dimaklumkan bahawa permohonannya untuk menukar syarat penggunaan tanah tersebut tidak akan diproses kerana tanah tersebut terlibat dengan projek Kementerian Pertahanan. Responden kedua telah mengajak perayu berunding pada 2002 untuk membincangkan dan menyelesaikan isu pemilikan tanah. Perayu telah menerima sepucuk surat daripada responden kedua memaklumkannya bahawa tanah tersebut telah diambil alih oleh kerajaan dan bahawa tanah tersebut dimiliki oleh responden pertama.

(4) Fakta bahawa perayu, antara lain, terus tinggal di atas tanah tersebut dengan keluarganya, berterusan membayar taksiran dan cukai pintu, malangnya, tidak membantu perayu dalam membuktikan bahawa hak miliknya tidak boleh disangkal. Sebaliknya, pemberian semula hak milik tanah pada tahun 1986 dan pendaftaran responden pertama sebagai pemilik berdaftar terbaru, responden pertamalah yang telah mendapat hak milik tidak boleh sangkal di bawah s. 340 KTN.

Case(s) referred to:

Lee Jean Khin Dan Lain-Lain lwn. Pengarah Tanah dan Galian, Negeri Pulau Pinang [1996] 1 LNS 234 HC ***(refd)***

M & J Frozen Food Sdn Bhd & Anor v. Siland Sdn Bhd & Anor [1994] 2 CLJ 14 SC ***(refd)***

Ng Kim Moi & Ors v. Pentadbir Tanah Daerah, Seremban, Negeri Sembilan Darul Khusus [2004] 3 CLJ 131 CA ***(refd)***

Legislation referred to:

Federal Constitution, art. 13(1)
Land Acquisition Act 1960, ss. 8, 10, 14, 16, 22, 23, 29(2), 35
National Land Code, s. 340
Specific Relief Act 1950, s. 44(1)

A *For the appellant - Trevor George De Silva (Shauni Yeap with him); M/s Trevor George Partnership*
For the 1st respondent - Noor Hisham Ismail; SFC
For the 2nd respondent - Ahmad Fuad Othman; State Legal Advisor, Selangor

B *[Editor's note: For the High Court judgment, please see Ishmael Lim Abdullah v. Pesuruhjaya Tanah Persekutuan & Anor [2013] 1 LNS 815.]*

Reported by Najib Tamby

C

JUDGMENT

Mah Weng Kwai JCA:

Background Facts Of Case And Chronology Of Events

D **[1]** 10 April 1973 – A declaration of intended acquisition in Borang D pursuant to s. 8 of the Land Acquisition Act 1960 ("the Act") that the land held under EMR 4091 Lot 1873, Mukim Rawang, District of Gombak, Selangor (the land) was needed for a public purpose, that is, for the construction of a military college,
E was gazetted.

[2] At the material time the registered owner of the land was one Lim Cheng Kim.

F **[3]** 21 August 1973 – An intended acquisition: notice of enquiry in Borang E under s. 10 of the Act was issued to several land owners including Lim Cheng Kim.

[4] 20 September 1973 – A written award of compensation in Borang G under s. 14 of the Act was issued and Lim Cheng Kim
G was awarded a sum of RM6,187.80 as compensation for the acquisition of the land.

[5] 13 October 1973 – A notice of award and offer of compensation in Borang H under s. 16 of the Act was issued to
H Lim Cheng Kim.

[6] 27 December 1973 – Upon the application of the Land Administrator under s. 29(2) of the Act the court ordered that the compensation payable to Lim Cheng Kim together with the
I compensation for 13 other land owners, in the total sum of RM743,553.50 be deposited into court.

[7] 11 March 1974 – Borang K, the notice that possession has been taken of land, under s. 22 of the Act was issued. A

[8] 24 October 1975 – The land was transferred from Lim Cheng Kim to Lim Yew Kay, the appellant's father.

[9] 22 January 1986 – The land was realienated and a new title issued in the name of the first respondent, with Borang D endorsed on the title. B

[10] 10 December 1992 – The land, notwithstanding the realienation to the first respondent, was transferred from Lim Yew Kay to the appellant. C

[11] 17 November 1993 - The appellant charged the land to United Malayan Banking Corporation ("UMBC") as security for a loan. D

[12] 12 June 2002 – A memorial was duly endorsed on the title to the land.

[13] 7 November 2002 – The appellant was informed by the second respondent that the land had been acquired on 11 March 1974. E

[14] 9 March 2005 – The appellant was served with a notice to vacate and demolish any structures on the land on or before 22 March 2005. F

The Appellant's Case

[15] The appellant claimed to be the lawful registered owner of the land having been transferred from his father on 10 December 1992 and that he had been residing on the land with his family since 1993. G

[16] In 1995 the appellant, as the owner, had let part of the land to a telecommunications company for the construction of a telecommunications tower. H

[17] The appellant was (presumably) unaware of the 1973/74 acquisition until on or about 9 March 2005 when two officers from the second respondent's office served him with a notice to vacate and demolish. I

[18] The appellant had been diligently paying the assessments and quit rents since 1993 and had in fact charged the land to UMBC (now known as RHB Bank Bhd) as security for a loan on 17 November 1993.

[19] The appellant had made several land title searches on the land from 1993 to 2005 and at all times the land searches confirmed that the appellant was the registered proprietor.

[20] The appellant claims to have an indefeasible interest in the land pursuant to s. 340 of the National Land Code as no memorial in respect of the acquisition of the scheduled land had been endorsed on the title to the land in breach of s. 23 of the Act, and hence the acquisition process has not been completed in accordance with law.

[21] The appellant also claims lawful ownership as he has been in continued and undisturbed possession of the land since 1993 and having duly paid all the assessments and quit rents over the years.

[22] The appellant sought the following remedies in his originating summons:

(a) An injunction to restrain the first respondent and/or the second respondent from entering and taking possession of the land and demolishing any structures thereon pursuant to s. 44(1) of the Specific Relief Act 1950;

(b) A declaration that the appellant is the lawful registered owner of the land; and

(c) That in the event title to the land has been vested in the first respondent, steps be taken to restore ownership thereof to the appellant.

[23] As there was no endorsement of a memorial on the document of title, Lim Cheng Kim was able to transfer her title to the appellant's father on 24 October 1975 and thereafter his father was also able to transfer ownership to the appellant on 10 December 1992, thereby making the transfer subject to s. 340 of the National Land Code and the title indefeasible.

[24] As a result of the non-compliance by the respondents third party rights have accrued and registered over the land.

The Respondents' Case

[25] By the issuance of Borang K to Lim Cheng Kim and to the other 13 land owners, the land had been lawfully acquired and formal possession had been taken by the Land Administrator.

[26] Compensation for the acquisition had been duly awarded to the previous owners including Lim Cheng Kim.

[27] The second respondent had admitted that due to the omission on its part to endorse the memorial on the document of title to the land, the transfers in 1975 and 1992 had been wrongfully occasioned.

[28] The respondents claim that the land had been vested in the State Authority upon the issuance of Borang K on 11 March 1974 and that the endorsement of the memorial required under s. 23 of the Act was a mere formality.

[29] In any event after the 1973/74 acquisition the land had been realienated and registered in the name of the first respondent in 1986 and as such the first respondent had obtained an indefeasible title to the land.

High Court Decision

[30] After a full trial the learned trial judge on 11 March 2010 held that the acquisition process for the land had been completed when Borang K was issued on 11 March 1974 and that the land thereafter vested in the State Authority, notwithstanding that there was no endorsement of the memorial on the document of title.

[31] The realienation of the land and registration in the name of the first respondent gave the first respondent an indefeasible title to the land.

The Appeal

[32] Being dissatisfied with the decision of the learned trial judge the appellant appealed against the whole decision to the Court of Appeal.

A **Hearing Of The Appeal**

[33] Upon reading the written submissions of counsel for the appellant and the respondents and upon hearing oral submissions of counsels aforesaid, the court reserved its judgment on the
B appeal.

Court Of Appeal Decision

[34] After considering the facts of the case and the law pertaining hereto, we have in our judgment decided to uphold the decision
C of the learned trial judge and to dismiss the appeal.

[35] We now give the grounds of our decision.

Grounds Of Decision

D **[36]** In this appeal the main issue to be determined by the court was whether the 1973/74 acquisition process had been completed.

[37] If it had been so completed then of course the land would have vested in the State Authority and the first respondent would
E have obtained good title when the land was realienated and registered in the name of the first respondent.

[38] On the other hand, if the 1973/74 acquisition process was not completed then it would appear that Lim Cheng Kim was in
F a position to validly transfer the land to the appellant's father who subsequently on 10 December 1992 transferred the land to the appellant.

[39] We are of the view that upon the issuance of Borang K on 11 March 1974, the land had vested in the State Authority
G notwithstanding that there was an omission to endorse the memorial on the title, a requirement under s. 23 of the Act. We agree with the conclusion of the learned trial judge that the requirement for an endorsement of the memorial was a formality and the omission to do so did not invalidate the acquisition
H process. As such, the purported transfer of the land in 1975 to the appellant's father and in 1992 to the appellant were void and ineffective. The acquisition process had ended in 1974.

[40] It is interesting to note that the appellant did not challenge
I the validity of the commencement of the acquisition proceedings from the outset. The appellant's main bone of contention in his argument was that the acquisition was not complete and thus defeasible under the National Land Code.

[41] The appellant further contended that as the 1973/74 acquisition was not completed and there have been no subsequent acquisition proceedings carried out, the title obtained by the appellant in 1992 is therefore indefeasible.

[42] We are of the view that upon a closer reading of ss. 22 and 23 of the Act it is clear that once formal possession of the land has taken place the land vests with the State Authority.

[43] Sections 22 and 23 of the Act read as follows:

Formal possession

22. (1) The Land Administrator shall take formal possession of any scheduled land by serving upon the occupier thereof or, if he cannot be found, by posting thereon, a notice in Form K.

(2) A copy of the list of lands gazetted under subsection 8(1), or any relevant part thereof, shall be included as a schedule to the notice in Form K.

(3) Upon taking possession of land under subsection (1) the Land Administrator shall also serve a copy of the notice in Form K upon:

(a) the registered proprietor of the land, where he is not the occupier; and

(b) the proper registering authority, where he is not the Land Administrator himself.

Entry in register

23. The proper registering authority, upon receipt of the notice in Form K, or the Land Administrator of his own motion after completing Form K, shall, upon the register document of title or other appropriate record in his possession as specified in subsection 9(2) or (3), make with respect to any scheduled land a memorial:

(a) that the whole of such land has been acquired and has vested in the State Authority or, in the case of a parcel of a subdivided building, in the person or corporation on whose behalf the parcel has been acquired; or

(b) that so much of the land as is specified in the last column of the schedule to such Form has been acquired.

[44] It is not in dispute that Borang K had in fact been issued on 11 March 1974.

[45] Our view is fortified by the provisions of s. 35 of the Act which read:

> Withdrawal from acquisition
>
> 35. (1) The State Authority shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.
>
> (1A) Notification of every withdrawal from the acquisition of any land shall be published in the Gazette.
>
> (2) Whenever the State Authority withdraws from any acquisition under subsection (1), the Land Administrator shall:
>
> (a) determine the amount of compensation due for the damage, if any, done to such land by action taken under section 5 and not already paid for under section 6, and pay such amount to the person injured; and
>
> (b) pay to the persons interested all such costs as shall have been incurred by them by reason or in consequence of the proceedings for acquisition, together with compensation for the damage, if any, which they may have sustained by reason or in consequence of such proceedings.
>
> (3) The First Schedule shall apply, so far as may be, to the determination of the compensation payable under this section.
>
> (4) The Land Administrator or other registering authority shall make a note of any withdrawal under this section in the manner specified in subsection 9(2) or (3).
>
> (5) Notwithstanding anything contained in this section, the State Authority shall reserve the right to forfeit an amount which is sufficient to defray the amount of costs and damages incurred by any person interested and such amount shall be determined by the Land Administrator and shall be deducted from the deposit under paragraph 3(3)(d) in the event of any withdrawal made under this section.

[46] Essentially, what s. 35 of the Act means is that once possession of the land has been taken the acquisition process is complete and it will be too late for the State Authority to withdraw from the acquisition. The acquisition process is deemed ended and final and the State Authority cannot resile from its

position. Likewise in this case, once Borang K had been issued giving notice that possession has been formally taken of the land under s. 22 of the Act it signalled the completion of the acquisition process and that the ownership of the land by the proprietor at the material time had terminated. The completion of the acquisition process did not depend on the endorsement of a memorial on the title.

[47] In *Lee Jean Khin Dan Lain-Lain lwn. Pengarah Tanah dan Galian, Negeri Pulau Pinang* [1996] 1 LNS 234; [1996] MLJU 393, it was correctly observed by His Lordship Abdul Hamid Mohamad J (as he then was) that once possession has taken place, the State Authority no longer has the liberty to withdraw from the acquisition.

[48] In light of the above, we are of the view that the finding by the learned trial judge that the endorsement of the memorial under s. 23 of the Act was a formality is correct. The omission of the endorsement did not invalidate the acquisition process.

[49] We wholly agree with the findings of the learned trial judge that Lim Cheng Kim, in law and in fact no longer had good title to the land in 1975 and as such was not in a position to transfer her title to the appellant's father. This is what the learned trial judge said in her grounds of judgment at rekod rayuan tambahan at p. 64:

> Based on what I have stated above it was my view that when the said Lim Cheng Kim purported to transfer the said land to the Plaintiff's father on 24.10.1975, the said land had been effectively vested in the State Authority. Although the said Lim Cheng Kim's name continued to appear in the register of title as its proprietor, in fact and in law she no longer had any good title or any right to the said Land and by virtue thereof was incapable of transferring the same to the said Lim Yew Kay (the Plaintiff's father).
>
> By the same token, the Plaintiff's father, the said Lim Yew Kay not having acquired any or any good title over the said land could not then profess to transfer it to the Plaintiff.

[50] It is trite that where a vendor does not have good title, the common law rule is that no person can give a better title than what he had under the age old maxim of "*nemo dat quod non habet*" as was held in *M & J Frozen Food Sdn Bhd & Anor v. Siland Sdn Bhd & Anor* [1994] 2 CLJ 14; [1994] 1 MLJ 294.

[51] The appellant in his submissions attempted to make out a case that he was unaware of the acquisition proceedings until March 2005 when he was served with a notice to vacate and demolish any structures on the land by officers of the second respondent. However, a perusal of the following evidence will show that the appellant had prior knowledge that the land had indeed been acquired some 28 years previously, for a Ministry of Defence project, namely:

(a) On 13 April 1993 the appellant was informed that his application to change the condition of land usage of the land would not be processed as the land was involved in a Ministry of Defence project;

(b) On 24 June 2002, the second respondent invited the appellant to attend a discussion on 1 July 2002 to discuss and resolve the issue of ownership of the land; and

(c) The appellant received a letter dated 7 November 2002 from the second respondent informing him that the land had been acquired by the government on 11 March 1974 for a military college project and that the land belonged to the first respondent.

[52] The above will show that the appellant since 1993 that is, a year after he became the registered owner of the land, had knowledge of the acquisition of the land for a military college project.

[53] The fact that the appellant continued to stay on the land with his family; continued to pay the assessments and quit rents; let out part of the land for the construction of a telecommunications tower by a telecommunications company; obtained a loan from UMBC on the security of the land and had conducted several land searchers on the land from 1993 to 2005 which continually showed that he was the registered proprietor of the land, unfortunately, did not assist the appellant to prove that his title was indefeasible.

[54] On the contrary, on the re-alienation of the land in 1986 and the registration of the first respondent as the new proprietor, it was the first respondent who had obtained an indefeasible title under the provisions of s. 340 of the National Land Code.

[55] Counsel for the appellant cited the case of *Ng Kim Moi & Ors v. Pentadbir Tanah Daerah, Seremban, Negeri Sembilan Darul Khusus* [2004] 3 CLJ 131 in support of the proposition that the court should require the acquiring authority to act strictly in accordance with the terms of the Act when depriving an owner of his immovable property in exchange for fair and reasonable compensation. However, the majority of the Court of Appeal in *Ng Kim Moi* held that the issuance of Forms A and B of the Act was not mandatory and its non-compliance was not fatal to the acquisition proceedings.

[56] While the court wholly agrees with counsel for the appellant that the appellant's ownership rights are protected by art. 13(1) of the Federal Constitution, which rights cannot be deprived of "save in accordance with law" that is, while the appellant's land may be compulsorily acquired there must be adequate compensation; the court cannot agree with the contention that there has been no lawful acquisition in this case. *Albeit*, no acquisition proceedings have been commenced after the appellant became the registered owner but the record shows that an acquisition was commenced in 1973 and completed in 1974. Due compensation no doubt, was not paid to the appellant but it was most certainly paid to Lim Cheng Kim, the predecessor in title. The acquisition was in accordance with law and thus constitutional even before the appellant purportedly became the lawful owner in 1992. The appellant's father and the appellant did not obtain an indefeasible title pursuant to s. 340 of the National Land Code.

Conclusion

[57] In the result, it is the judgment of the court that the requirement for an endorsement of the memorial on the title to the land pursuant to s. 23 of the Act, is a formality and the omission did not vitiate the acquisition proceedings to render them null and void and of no effect as the acquisition of the land had been completed in 1974 when Borang K was issued.

[58] Accordingly, the appeal is dismissed with costs.